IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 609 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAJAKBHAI YAKUBBHAI SHAIKH

Appearance:

1. Criminal Appeal No. 609 of 1994

Mr. K. P. Rawal, APP, for the appellant

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/12/2002

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the State of Gujarat, through the Food Inspector, Himatnagar, has challenged judgment and order dated February 7, 1994 passed by the learned Chief Judicial Magistrate, Himatnagar, in Criminal Case No.1411 of 1992, by which, the respondent came to be acquitted of the offences punishable under Sections 2(1A)A, M, 7(1), 7(5) read with 5 and 47, 16(1) of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: Complainant, Ratilal Shivram Patel, serving as Food Inspector in the Food & Drugs Control Department, who was authorised to act as Food Inspector within the local limits of Himatnagar town, had collected sample of orange syrup from the hand-larry of the respondent on March 21, 1992 around 12 noon. The said sample was filled in three glass bottles in the presence of the pancha by following the usual procedure. One bottle of the quantity of 250 ml. of orange syrup was sent to the Local Health Authority for analysis and the report of the Local Health Authority indicated that the sample of orange syrup was adulterated and did not conform to the standards prescribed under Rule 47 of the Prevention of the Food Adulteration Rules ('Rules' for short). The Food Inspector obtained sanction from the Competent Authority to launch prosecution against the respondent and, after obtaining the sanction, a complaint came to be filed in the Court of the learned Chief Judicial Magistrate, Himatnagar, which came to be registered as Criminal Case No.1411 of 1992 for the offences as stated above.

3. After the summons were served on the respondent in Criminal Case No.1411 of 1992, the respondent appeared through his advocate and filed an application on August 14, 1992 requesting the learned Judge to send the another sample of orange syrup to the Central Food Laboratory, Ghaziabad, ('CFL' for short), for analysis. Accordingly, the said sample of orange syrup was sent to the CFL and, on receipt of the report, it was admitted in evidence of the case at Exh.32.

4. The complainant, Food Inspector, was examined at Exh.13. During the examination, he had produced documentary evidence with regard to collection of sample orange syrup from the hand-larry of the respondent, consisting of panchanama, sanction order, report of the Public Analyst, Rajkot, report of CFL Exh.32, etc. to prove the charges against the respondent. One Gajendrabhai Manilal Gor, who had remained as panch at the time of drawing of sample from the hand-larry of the respondent, was examined at Exh.36. After recording of the evidence of the prosecution, the learned Magistrate framed charge at Exh.34 against the respondent for the abovementioned offences. The charge was read over and explained to the respondent wherein he had pleaded not guilty and claimed to be tried. The defence of the respondent was that he was not the owner of the hand-larry, namely, Dastan Sarbat Center, and he was only engaged to bring ice for preparing syrup, and, at the

time of collection of sample of syrup, the owner of the hand-larry had gone for taking lunch. It was stated that he had not committed any offence and, therefore, he be acquitted.

5. The learned Chief Judicial Magistrate, on appreciation of oral and documentary evidence, deduced that there was variance between the report of the Local Health Authority and the report of the CFL and, as per the provisions of the Act, the report of the CFL shall supercede the report of the Public Analyst. It was concluded that, as per the report of the CFL Exh.32, the contraband found in the syrup was as per the standard prescribed under Rule 47 of the Rules and, therefore, no offence was committed by the respondent. The learned Magistrate has also concluded that the complainant had failed to prove that the glass bottles in which the sample of orange syrup was filled in were not dry and clean bottles. It was concluded that, on the contrary, as per the oral testimony of panch witness, Gajendrabhai Manilal Gor, Exh.36, in the bottles in which the syrup was to be filled in, there was some liquid like water. Therefore, the learned Magistrate was of the opinion that the complainant had failed to prove that he had collected the sample of orange syrup in clean and dry bottles. On the basis of the abovereferred to conclusion, the learned Chief Judicial Magistrate acquitted the respondent from the charges framed against him, which has given rise to filing of this appeal by the State of Gujarat.

6. Heard learned Additional Public Prosecutor, Mr. K.P. Rawal, who has taken me through the entire record and proceedings produced at the trial.

7. It is settled legal principle that, when once the CFL issues a report, the report issued by the Public Analyst automatically stands superseded [See: 1984 GLH 413 [FB] Prahladhai Ambalal Patel vs The State of Gujarat and another]. As per the report of the CFL, Exh.32, the sample of orange syrup collected from the hand-larry of the respondent was conforming to the standard prescribed under Rule 47 of the Rules and, therefore, the acquittal recorded by the learned Chief Judicial Magistrate on that count deserves to be confirmed.

8. The second ground on which the respondent came to be acquitted was that the Food Inspector had not followed the mandatory provisions for collecting sample of orange syrup in clean an dry bottles. In the case of State of Gujarat vs. Bhupendra M. Mehta, reported in 1999 (1) G.L.H. 227, this Court held that the burden lies on the

prosecution not only to comply with the mandatory provisions of Section 22 of the Act but also to satisfy the Court by leading evidence that the bottles used were clean and dry. In the present case, the respondent, Food Inspector, had not led cogent and convincing evidence that he had collected sample of orange syrup in clean and dry bottles. On the contrary, the evidence of independent panch witness indicated that, when the sample was filled in the bottles, some liquid like water was already there in the said bottles. In view of the above set of evidence, in my view, the learned Chief Judicial Magistrate was justified in holding that the Food Inspector had not followed the mandatory procedure of collecting samples by using dry and clean bottles as prescribed under Rule 22 of the Rules. As the prosecution had failed to prove the charges on the aforesaid two grounds, in my view, the benefit of doubt extended in favour of the respondent by the learned Chief Judicial Magistrate, resulting into acquittal of the respondent, does not deserve any interference by this Court.

9. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Chief Judicial Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Chief Judicial Magistrate for acquitting the respondents. Suffice it to say that the learned Chief Judicial Magistrate has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Chief Judicial Magistrate in order to convince me to take the view contrary to the one already taken by the learned Chief Judicial Magistrate. Therefore, the acquittal appeal deserves to be dismissed.

10. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

(M.H.Kadri, J.)

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(swamy)